THE VIRGINIA PORTION OF THE DISTRICT OF COLUMBIA.

By AMOS B. CASSELMAN.

(Read before the Society, December 8, 1908.)

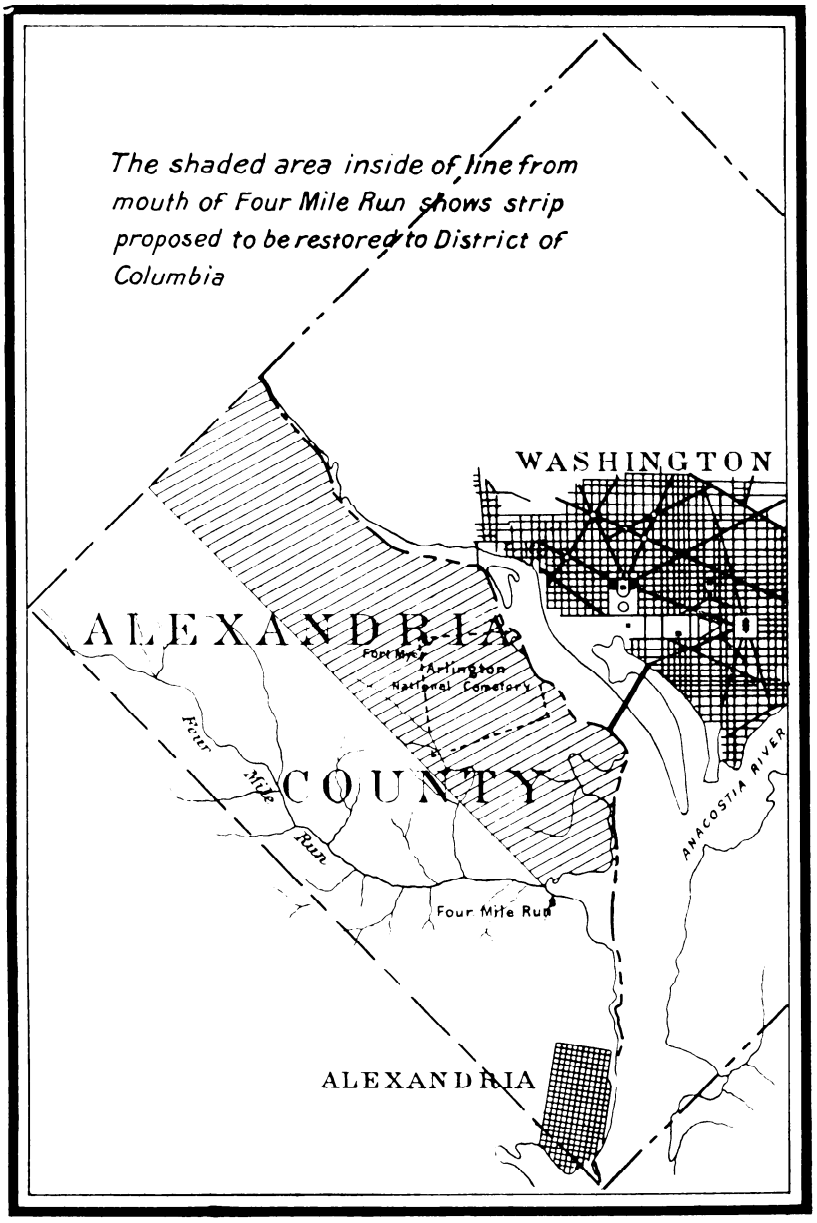
The subject of this paper may be regarded as interesting, not only because of the facts of local and general interest to which it refers, but also because of the controversies which have grown out of it. The retrocession to the state of Virginia, by an act of Congress, in 1846, of her portion of the District of Columbia, was at that time, and has been since, the subject of spirited controversy; it being contended that the act was unconstitutional, and, aside from this objection, that it was unwise, the result of purely local influences, and was wholly unjustified by any public interest, or by any just conception of the probable future growth and expansion of the National Capital. The principal purpose of this paper, which assumes only to deal with familiar facts of history, is to weigh and consider those facts in their relation to this controversy touching the constitutionality and wisdom of the act of retrocession, by which the District of Columbia lost a third part of its small area.

Preliminary to this question, it is pertinent to the subject to refer to the original selection of the District of Columbia to become the seat of government, and to the strenuous rivalry and contention of sections and states to secure the location.

The choice and location of the present seat of government were determined in connection with the foundation of the government under the constitution.

The convention which framed the constitution deemed it necessary as a part of their work to make some provision for a federal capital. In the debates on the subject it was suggested that the capitol ought not to be located in the same city with the capitol of any state, or in any large commercial city; but the latter suggestion was withdrawn, because it was known that both Philadelphia and New York would endeavor to secure it; and the convention decided to leave the choice of location to Congress. The subsequent controversy in Congress over the location showed the wisdom of this action on the part of the convention, a controversy which, had it occurred in the constitutional convention, might have defeated its object, and prevented the adoption of a constitution, or the formation of that union under which we live.

When the first congress, in 1790, took the subject up, there developed at once the first manifestation of sectional rivalry between North and South to secure the location. This rivalry of the sections developed an intensity hardly understood at this time, and seemed to threaten the stability of the new government. The choice lay between three localities: the Delaware, the Susquehanna and the Potomac, with a majority of both houses of Congress favoring one of the northern streams. The House voted in favor of Wright's Ferry, on the Susquehanna, which was said to be thirty-five miles above lower navigation. The Senate substituted Germantown, on the Delaware, and the House concurred in the amendment, but owing to some minor differences the bill never became a law. The vote was on sectional lines, and the North outnumbered the South, but the later was unwilling to yield. Madison boldly declared that could Virginia


The shaded area inside of line from mouth of Four Mile Run shows strip proposed to be restored to District of Columbia
WASHINGTON
ALEXANDRIA
COUNTY
Fort Myer
Arlington National Cemetery
Four Mile Run
Four Mile Run
ANACOSTIA RIVER
ALEXANDRIA

have foreseen the action of Congress on this subject that state would not have become a member of the Union. Fortunately the controversy was ended by a compromise, which was effected through the joint efforts of those two great rival leaders, Hamilton and Jefferson, by which sufficient northern votes were changed in favor of the location on the Potomac, thus causing its selection.

The act of Congress approved July 16, 1790, provided for a location on the River Potomac between the mouth of the Eastern Branch and the Connococheague, to be determined by three commissioners to be appointed for the purpose by the President, and "who shall, under the direction of the President, survey and by proper metes and bounds define and limit" the said district of territory. The commissioners, who were appointed by the President, were required to perform their duties under his direction; hence the selection, within the limits defined, was virtually left to Washington. The act did not specify whether the district should be located on one side or both sides of the Potomac. But the terms of the act of Congress, as well as of the constitutional provision, provide for a district in the form of a square; hence, if the capital city should be located on a river, and at or near the center of a square, it would necessarily embrace territory on both sides of the river. The constitution provides also for the acceptance of territory from "particular states"—in the plural. So the district, as located, was formed in the manner manifestly intended both by Congress and the constitution, by embracing territory in the form of a square, from two states lying on opposite sides of the river.

The act of Congress was definite only in providing that the district should be located on the River Po-

tomac between the two specified points—the mouth of the Eastern Branch and the Connococheague, which are about sixty-five miles apart on an air line. Congress had rejected every city or large town that had been proposed—New York, Philadelphia, Baltimore, Lancaster, York, Wilmington, Alexandria, and decided in favor of a rural district in the interior, free and apart from any city or business metropolis.

Just above the mouth of the Connococheague a district ten miles square could have been formed to embrace territory from three states; and a location at that point was regarded with much favor, and was recommended by the act of cession of the Virginia Legislature, enacted December 3, 1789. The preamble to that act contains, among other clauses, the following:

"And whereas it appears to this assembly that a situation combining all the considerations and advantages before recited may be had on the banks of the River Potomac, above tide water, . . . where in a location ten miles square, if the wisdom of Congress shall so direct, the States of Pennsylvania, Maryland and Virginia may participate in such location."

So, while Virginia ceded ten miles square to be located at the pleasure of Congress, it expressly recommended the Connococheague as a suitable location; and that locality received a good deal of attention in the discussion, its long Indian name being made a point of ridicule by those who opposed it. Washington visited Williamsport, at the mouth of the Connococheague, and Hagerstown, near by, in October, 1790, but he evidently did not regard the locality with much favor.

Aside from all other considerations, the chief and predominating influence that determined the location was the personal preference of Washington, who de-

cided in favor of a location as near as possible to his country estate at Mount Vernon, and which included the neighboring town of Alexandria; notwithstanding the important and significant fact that the latter was outside of the limits prescribed by the act of Congress.

It was natural that Washington should thus have a strong personal bias in favor of the locality chosen. Alexandria, his home town, eight miles from Mount Vernon, was in Washington's day a place of commercial and political importance. It was a commercial port from which he had shipped to England many cargoes of tobacco from his Mount Vernon plantation. It was here in 1755 that General Braddock disembarked his British regulars, on his expedition against the French and Indians. Irving describes how Washington, then living in retirement at Mount Vernon, viewed with pleasure and admiration the transports bearing the British army, as their sails carried them up the Potomac, and, mounting his horse, rode over to Alexandria where he accepted from General Braddock an appointment to serve on his staff. He there met also the council of colonial governors convened to meet and confer with General Braddock. Washington was always closely identified with the local interests of this vicinity, then included in Fairfax County. He had represented the county in the House of Burgesses; commanded its militia; taken an active interest in all its political contests, engaging on one occasion at Alexandria in a personal encounter with William Payne, in an election dispute, in which it is recorded that Washington got the worst of it. He served as a vestryman for three churches of the county—at Alexandria, Pohick and Falls Church. On the completion of Christ Church at Alexandria, in 1773, he was one of ten who bought

pews; and his pew, with that later owned by Robert E. Lee, are reverently cared for in that historic house of worship. In 1788 Washington was chosen and served as master of his masonic lodge at Alexandria. He was, therefore, at the time of his election as President of the United States, the master of his lodge in that town, which still preserves the Bible, chair, gavel and other ornaments and furniture of the lodge which were then in use, and an original painting of Washington in his masonic regalia, all held in reverence by his successors and brethren of the masonic fraternity. When in 1789 Washington set out to assume the office of President, his neighbors of Alexandria gave him a public dinner, and presented him an address in which they extolled him as a neighbor and friend, and to which he responded in like terms with expressions of personal affection and regard.

These familiar facts of history explain Washington's preference and partiality for the location chosen by him for the seat of government. They aid in explaining its exact boundaries, which were determined by fixing the first corner. This first corner was fixed by Washington in the manner announced by him in his proclamation dated January 24, 1791, in the following language:

"Now, therefore, . . . I do hereby declare and make known that the location of one part of the said district of ten miles square shall be found by running four lines of experiment in the following manner; that is to say: running from the courthouse in Alexandria, Virginia, due southwest half a mile, and thence a due southeast course 'till it shall strike Hunting Creek, to fix the beginning of said four lines of experiment."

The site of this first corner has recently been located by the Geological Survey in the wall of an old mill; but the stone itself, which was laid on April 15, 1791,

with masonic ceremonies, to mark the site, has disappeared, or is concealed in the old wall.

The location chosen by Washington, as above stated, was not the location which had been designated or authorized by Congress. On the contrary, Washington disregarded the act of Congress, in order to include Alexandria within the District, and made necessary an amendment to the original act of location which Congress subsequently adopted. The facts are shown by his proclamation. It provides, as stated, for establishing the first corner of the square just below the town of Alexandria, directs the commissioners to run their four lines of experiment from that beginning, and declares and makes known the acceptance as "one part" of the district, of so much of the square, so designated, as lay above the mouth of the Eastern Branch; "reserving" the survey and location of the "remaining part" of the district to be made thereafter agreeably to law.

No doubt Washington felt assured that Congress would ratify his action. Perhaps he had consulted the leaders. The fact is that his action left Congress virtually nothing else to do. Having accepted two thirds of a designated square as "one part" of the seat of government, which acceptance was final and in accordance with law, so far as that " part " was concerned, Congress could hardly do otherwise than amend the law so as to authorize the acceptance of the remaining third of the square. Had Washington designed to coerce Congress, he could not have taken means better adapted to that end; and he did not escape censure and criticism for his alleged partiality in selecting the site chosen by him for the seat of government. His attorney general, Edmund Randolph, attacked him savagely in a pamphlet on this

account; but Randolph was discredited, and his pamphlet itself appears to have been lost in oblivion.

To one not wholly familiar with the subject, the question might suggest itself: Why did not Washington choose Alexandria as the site for the capital? The topography is not inferior in natural advantages to the site chosen. Bishop Meade, in his "History of the Old Churches and Families of Virginia," referring to the town of Alexandria, says:

> "So promising was it at the close of the war that its claims were weighed in the balance with those of Washington as the seat of the National Government. It is thought that, but for the unwillingness of Washington to seem partial to Virginia, Alexandria would have been the chosen spot, and that on the first range of hills overlooking the town the public buildings would have been erected."

The conclusion stated by Bishop Meade appears to be without foundation. The reason Washington did not choose Alexandria as the site for the national capital was that he had no authority or power to do so. Congress had expressly rejected that town when it was proposed. He did so far ignore the act of Congress as to locate one third of the ten miles square outside of the prescribed limits, and that stretch of authority Congress ratified. But it may well be doubted that Congress would have ratified the selection of Alexandria as the site for the capital after it had expressly rejected that location. Alexandria was included in the corner of the District of Columbia, contrary to the original purpose and act of Congress, through the personal influence of Washington and through his executive power as President. It was added or tacked on to the district by an amendatory act, followed by a supplemental proclamation of

the President. The incident shows that executive power was not less potent or active then than it has been since. But whatever expectations of benefit to the town may have been entertained at that time, they were never realized but soon abandoned.

The choice and location of the seat of government were thus determined after much difficulty, contention and a bitter rivalry of sections, of states, and of cities to secure it. Yet, hardly had the location been occupied by the government, before the local residents therein began to manifest their dissatisfaction and to appeal and petition to Congress and to the states for the retrocession of their territory. The first efforts for retrocession were made by the resisidents of Georgetown in 1803. A bill to retrocede to the State of Maryland her portion of the District was introduced in Congress and received 26 votes in the affirmative. The effort for retrocession was renewed the next year, in 1804, and again in 1818 and 1834. The act of 1790, locating the seat of government, did not take effect until Congress enacted laws for its government, and as the time for its occupancy by the government was postponed ten years, or until 1800, the territory ceded still remained under the jurisdiction of Maryland and Virginia, respectively, up to 1801, and the residents continued to enjoy the privileges of citizenship in those states, and voted in the presidential elections up to 1800. But as soon as the law enacted by Congress in 1801 brought them under the exclusive legislation of Congress, with loss of the rights of citizenship in the states, they at once began to lament their loss of political rights, and to agitate for retrocession.

The movement which culminated in 1846 in the

retrocession of Alexandria County began with the citizens of the town of Alexandria; the country part of the District was opposed to retrocession.

The reasons urged in favor of the retrocession of Alexandria County are found in petitions and memorials, in the congressional proceedings, and in the preamble to the act of Congress. The chief reasons were two: First, that the United States did not need Alexandria County for the purposes of the seat of government; the public buildings were all erected on the north side of the river, as required by law, none on the south side; and it was declared that so far as could be foreseen, the United States would never need that part of the District for the purposes of the seat of government. Secondly: that the people of Alexandria had failed to derive or share in the benefits which had been enjoyed by the residents of the Maryland portion of the District, in the disbursements for public improvements, etc., while, on the other hand, they were deprived of those political rights incident to citizenship in a state. Their petition to Congress is pathetic in describing their hard condition, deprived of being Virginians on the one hand, or of equal advantages with residents of the Maryland part of the District on the other. The preamble to the act of retrocession recites only one reason, and is as follows:

"Whereas no more territory ought to be held under the exclusive legislation given to Congress over the District which is the seat of the General Government than may be necessary and proper for the purposes of such a seat; and whereas, experience hath shown that the portion of the District of Columbia ceded to the United States by the State of Virginia has not been, nor is ever likely to be, necessary for that purpose; and whereas, the State of Virginia, by an act passed,

etc., etc., . . . hath signified her willingness to take back this said territory ceded as aforesaid; therefore—

"Be it enacted, etc. . . ."

Briefly, therefore, the act of retrocession was enacted as a favor to the citizens of the town of Alexandria, a favor based on the declaration of Congress that the United States did not need that territory.

Concerning the reasons thus assigned in support of the measure, it may be said that they seem insufficient to justify the act, even if true. If it were true that the United States had no especial need for this territory, that would hardly seem a sufficient reason for giving it away. Nations, or individuals, are not in the habit of giving away valuable territory because they do not need it. In this instance it seems more surprising because the thing given away was part of a small territory, none too large, which, after the most active competition and bitter rivalry and contention, had been set apart as the seat of government.

But in the short period since that act, the United States has found it necessary to become the owner of two square miles of this territory, for use as a military post, a national cemetery, signal corps station, an agricultural experiment farm, etc., and will doubtless need still further acquisitions of this territory. So one of the principal reasons alleged has been demonstrated to be untrue.

Concerning the other principal reason stated, namely, that the people of Alexandria were deprived of the privileges of citizenship in a state, that was equally true of the Maryland portion of the District and is true now of many thousands of men of voting age in Washington City, a number constantly increasing with the growth of the capital. Furthermore,

that condition was fully understood when this territory was selected and set apart to become the seat of government. It is a condition incident to the district set apart under the constitution to be under the exclusive legislation of Congress. The attitude of the Alexandrians and their friends in 1846 was in striking contrast with that of their ancestors in 1790, when Virginia and the South (quite like the North, in that respect) seemed willing to make any sacrifice to obtain the capital for their section. Virginia and Maryland each tendered to the United States ten miles square of its territory, to be located anywhere within the state, at the pleasure of Congress. Richmond, or Baltimore, would have been ceded, unhesitatingly, and no objection was suggested that the inhabitants would lose the right of voters in a state. But in 1846 it was urged as a pathetic grievance by the people of Alexandria that, through the action of their ancestors, and of Washington, they, "in an evil hour," had been included within the District of Columbia. The effort to get Alexandria out of the district was as stenuous as the previous effort to have it included within.

That the act of retrocession was enacted as a favor to the Alexandrians, and not to subserve any public interest, is illustrated by the provision that it should not become effective until ratified by vote of the people of the county. This is the only instance in the history of the United States government of the initiative and referendum. The act was referred to 985 voters in Alexandria County. Five commissioners appointed by President Polk held the election at the Court House and took the vote viva voce, and published the names of all who voted for and against the act, 763 voting for and 222 against it. Thereupon the President is-

sued his proclamation declaring retrocession duly ratified and consummated.

The people of Alexandria County, residing outside of the town, were opposed to retrocession, and after the election, filed with the legislature of Virginia a memorial protesting against the constitutionality of the act. Their protest, which, of course, was unavailing, is as follows:

MEMORIAL OF THE CITIZENS
OF THE
COUNTRY PART OF ALEXANDRIA COUNTY TO THE VIRGINIA HOUSE OF ASSEMBLY.

The respectful memorial of the undersigned citizens of the country part of the county of Alexandria, late of the District of Columbia, to the house of assembly of the commonwealth of Virginia, sheweth:

That on behalf of ourselves and of a large majority of our fellow-citizens of the rural portion of the county of Alexandria, we solemnly and respectfully protest against the act of retrocession passed by the congress of the United States, at the first session of the 29th congress, retroceding, under certain conditions, the country aforesaid to the commonwealth of Virginia, for the reasons following, namely:

That the country portion of the inhabitants of said county were not consulted upon the matter of retrocession, or advised of the intention to seek a change of our allegiance, the whole proceeding having been concocted and determined upon in secret meeting of the corporation of Alexandria, an irresponsible body, having no manner of right to act upon the subject:

That we believe the legislature of the commonwealth have been misinformed with respect to the wishes of the citizens of the country portion of the county, as well as of many of the town of Alexandria itself:

That the act of retrocession is an act in clear and obvious hostility to the spirit and provisions of the constitution of the United States, and beyond the possibility of honest doubt, null and void:

That therefore we respectfully invoke the senate and house of assembly to disregard and give no countenance or heed to any so-called commissioners or representatives pretending or purporting to speak for and in behalf of the citizens of the county of Alexandria, and more especially of the citizens of the country part of the same:

That we further respectfully request the legislature of the said commonwealth to suspend all further action in relation to said county until the constitutionality or unconstitutionality of said act of retrocession by the congress of the United States can be determined by the authority legitimately charged with the same; it being the fixed purpose and intention of your memorialists, and a majority of the citizens of the country part of the county, as well as others, citizens of the town of Alexandria, to bring without delay the question of said constitutionality or unconstitutionality before the supreme court of the United States:

That your memorialists, in common with numerous citizens of good education and great experience, skilled and learned in the law, do by force of the plain and obvious dictates of the constitution of the United States, as well as of the acts of original cession by the states of Virginia and Maryland, deem and consider the whole District of Columbia, or federal ten miles square, to be a perfect unit, undivided and indivisible, and so deeming and considering, they are constrained to conclude that even if the congress of the United States had a constitutional power to cede, said congress must cede the whole and not a part:

That lastly, your memorialists, penetrated with a deep regard for the great principles of constitutional republican freedom, cannot behold with feelings other than painful, the severe blow dealt by said act of retrocession, at one of the chief principles upon which are built the liberties of our common country, namely, that whereby the fairly expressed will of a majority shall be taken as law, inasmuch as the congress in said act of retrocession allowed to a small minority of the citizens of the District of Columbia the decision of a question of paramount importance to the whole thus virtually

establishing a precedent equally novel and dangerous, whereby a minority is empowered to rule the majority.

County of Alexandria, December 2, 1846.

Signed,

ANTHONY R. FRASER,
WESLEY CARLIN,
HENRY HARDY,
RICHARD SOTHORON,
NICHOLAS FEBREY,
WALTER S. ALEXANDER,
SAMUEL BIRCH,
HORATIO BALL,
WASH. T. HARPER,

Committee of nine, acting by order and in behalf of the citizens of the country part of Alexandria county.

Accessit,

WILLIAM H. PRENTISS.

Had the act of retrocession been limited to the town of Alexandria and its immediate environs, and not included the county as a whole, there could have been little serious objection to it. The preamble to such an act could have truly recited that the original design and act of Congress excluded Alexandria from the location; that the wisdom of such exclusion had been demonstrated by experience and time; that the United States could never need the town of Alexandria for the purposes of the seat of government, nor derive any benefit from its retention; and that to detach and retrocede it to Virginia would in fact restore the District of Columbia more nearly to its original design. But Congress, it seems, could not or did not choose to discriminate. They saw no distinction between retroceding the town in the corner and the whole thirty-six square miles of Alexandria County, which included the outskirts and environs, the very threshold, of the national capital.

Two main objections have been urged against the act of retrocession: first, the objection to its constitutionality, and, second, that it was against the public interest. Those who have opposed the act appear to have overlooked the most serious objection to it—the objection, not against retroceding the town of Alexandria, but against the unnecessary retrocession of the whole county, which despoiled the seat of government of a necessary part of its small territory. This plain and obvious objection that the act granted too much, has hardly been noticed or mentioned. The truth is plain that the act did not receive that intelligent consideration which its importance demanded.

Mr. Albert Shaw, in an article in his magazine, the *Review of Reviews,* gives forcible expression to his objections to the act in which he says:

"We have reason to be thankful that the federal district was chosen and the lines of the new capital city laid down while Washington was President, and while American public men were gifted with the sense of historic vision and proportion. A generation or two later everything would have been done on a mean scale and in a shortsighted manner. This is illustrated by what actually happened in 1846. There arose a movement to secure a recession back to Virginia of that part of the federal district on the west side of the Potomac. Because it was not needed for federal purposes in the illustrious year of our Lord 1846, it seemed wholly impossible for the people then in control of our destinies to rise to the conception that it might be needed at some future time. The question was submitted to a vote of the inhabitants of that part of the district.

"Nine hundred and eighty-five people went to the polls, 222 of them to sustain the views of George Washington and show their faith in the future, and 763 of them to vote that they preferred to be citizens of Alexandria county, Va., rather

than of the federal district of Columbia. To be sure, it is not so strange that the inhabitants should have voted that way as that Congress should have been so petty and supine as to have mutilated a federal possession that Washington and his colleagues had secured with such painstaking, and with such noble faith in the future both of the country and of its capital city. Naturally enough, some of the citizens of Alexandria were ambitious to participate in Virginia politics. The country had passed through a very exciting campaign when William Henry Harrison was elected in 1840, and a still more exciting one when James K. Polk defeated Henry Clay in 1844. Doubtless the men of Alexandria disliked the political limitations under which they had no direct part in the political activities of that boisterous period.

"It cannot be said that up to the present moment the development of the city of Washington has been greatly hampered by the loss of Alexandria county. But the time will come when it will be perceived that President James K. Polk, who issued the proclamation of transfer on September 7, 1846, ought to have vetoed the whole proceeding. The United States government maintains on the Virginia side of the river the military post of Fort Meyer and the great national cemetery at Arlington. The rapid growth of public institutions in and about Washington, together with that of population, will soon make it evident that the territory on the west side of the river ought to be controlled and developed, as respects its street system and its various appointments, by the same enlightened and generous authority that has beautified what remains of the federal district, and made it a source of pleasure and pride to the whole nation."

It is unquestionably true, as Mr. Shaw states, that at either a later or an earlier period in our history the act of retrocession, in the form in which it passed, would have been impossible.

That the act was unconstitutional has been affirmed and denied by eminent lawyers both in and out of Congress. The question has never been expressly

decided, though an effort was made in 1875 to obtain a decision thereon by the Supreme Court. To that end a suit was brought by eminent counsel on behalf of a citizen of Alexandria County against the tax collector, designed expressly to test the question. The court, however, avoided an express decision whether the act of retrocession was constitutional, but held that the plaintiff as a citizen of that county was estopped from denying it. The court held that as the United States and the state of Virginia were the parties to the act of retrocession and that, as these parties were satisfied and had long acquiesced in the transfer of the county, without objection or protest, it was not competent for a private litigant to question the constitutionality of the act; and further, that the act involving the cession of territory being the exercise of political power could not be reviewed by the courts, at least, at the instance of a private citizen. So the effort to secure a decision from that court failed of its purpose.

In 1896 this question was considered by the Senate Committee on the District of Columbia. At the instance of that committee, the Senate had appointed the Park Commission to plan the future development of the city with reference to parks, boulevards, etc., and as incidental to this subject, attention was drawn to the Virginia environs of the capital. Accordingly, the chairman of that committee, Senator McMillan, introduced and the Senate adopted a resolution of inquiry addressed to the Attorney General, requesting his opinion touching the constitutionality of the act of retrocession, and as to what steps would be necessary to regain that territory to the District. The attorney general's response to said resolution is as follows:

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., January 15, 1897.

Sir: In response to a resolution of the Senate adopted December 17, 1896, whereby the Attorney-General is instructed to report to the Senate—

"First, what proportion the present holdings of the United States in the State of Virginia and within the former limits of the District of Columbia bear to the whole territory originally ceded by that State to the United States; secondly, by virtue of what legislation the Virginia portion of the original District was retroceded to the said State; thirdly, whether the constitutionality of such acts of retrocession has been judicially determined; fourthly, what legislation is necessary again to secure to the Government exclusive jurisdiction over either the whole or a part of such territory originally included in the District of Columbia as is now embraced in the State of Virginia—"

I have the honor to submit the following statement, in which an attempt is made to answer the several inquiries contained in the resolution, in the order in which they appear:

(1) In regard to the area of territory, lying within the former limits of the District of Columbia, which was ceded to the United States by the State of Virginia, I find it stated in the American Encyclopedia, Vol. VI, page 150, that such area embraced 36 square miles. This is understood to include the entire territory, both land and water, over which Virginia had jurisdiction at the time of the cession. Information derived from other sources places the area of land at about 29 square miles. I have no means of verifying the correctness of these figures, but they substantially agree with what I understand is commonly taken to be the extent of the territory in question, namely, that it embraced about one-third of the District of Columbia as it originally stood.

So far as I am advised, the lands within the limits of the territory ceded as above, which are at present owned by the United States, comprise what is known as the "Arlington estate," said to contain about 1,100 acres, and two or three small parcels containing together not over 5 acres, the whole

of the lands thus owned having an area of less than 2 square miles.

According to the foregoing, the holdings of the United States within the territory ceded by Virginia as aforesaid constitute, approximately, about one-eighteenth thereof.

(2) The "Virginia portion of the original District" was retroceded by the act of Congress of July 9, 1846, chapter 35, entitled "An act to retrocede the county of Alexandria, in the District of Columbia, to the State of Virginia" (9 Stat. L., 35). This act provided that, with the assent of the people of the county and town of Alexandria to be ascertained as therein prescribed—

"all of that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside therein."

The act further provided that it should not be in force until after the assent of the people of said county and town should be given thereto in the mode prescribed, namely, by a vote to be there taken; and that if a majority of the votes cast should be in favor of accepting its provisions, the act should in that case (and not otherwise) be in full force; and it thereupon became the duty of the President to inform the governor of Virginia that the act "is in full force and effect, and to make proclamation of the fact." The result of the poll, which was taken on the 1st and 2d days of September, 1846, showing a majority in favor of the act, proclamation of the fact was made by the President on the 7th of that month (9 Stat. L., 1000).

Previous to the legislation of Congress above mentioned, the general assembly of Virginia, by an act passed February 3, 1846, had provided—

"that so soon as the Congress of the United States shall by law recede to the Commonwealth of Virginia the said county of Alexandria, and relinquish their exclusive jurisdiction, as well of territory as of persons residing or to reside thereon,

the same shall be reannexed to the said Commonwealth, and constitute a portion thereof, subject to such reservation and provisions respecting the public property of the United States, as Congress may enact in their act of recession. (Acts of Virginia, 1845–46, p. 50.)"

The two acts hereinabove referred to—the act of the general assembly of Virginia of February 3, 1846, and the act of Congress of July 9, 1846—constitute the whole of the legislation by which the retrocession was effected.

(3) The constitutionality of said acts of retrocession has not, so far as I am advised, been judicially determined. In the case of Phillips *v.* Payne, which was heard by the Supreme Court of the United States at its October term, 1875 (see 92 U. S. Rep., 130), an effort was made by the plaintiff to raise the question of the constitutionality of said act of July 9, 1846, and have it decided by that court. But the court declined to pass upon it, holding that, under the circumstances of the case, the plaintiff was estopped from raising the point, and the judgment of the court accordingly went off on other grounds not involving the validity of such act.

(4) The answer to the question "what legislation is necessary again to secure to the Government exclusive jurisdiction over either the whole or a part" of the retroceded territory is, I think, indicated in the Constitution (see Art. I, sec. 8, par. 17); it is the cession of the territory by the State and an acceptance thereof by Congress. Inasmuch as this inquiry here apparently assumes the validity of the act of retrocession, since otherwise no legislation for the purpose therein mentioned would be necessary, I deem it proper to state that my response thereto is not intended as an expression of opinion upon that point.

I have the honor to be, very respectfully,

JUDSON HARMON,
Attorney-General.

THE PRESIDENT OF THE SENATE.

The attorney general, it may be observed, expressed no opinion as to whether the act of retrocession was

constitutional. It might be said that he avoided the question; and the subject was not further pursued by the Senate or the Committee.

In 1902 the following joint resolution was introduced in both houses of Congress:

JOINT RESOLUTION

Directing the Attorney-General to bring suit to determine the constitutionality of the retrocession of that portion of the original District of Columbia which was ceded to the United States by the State of Virginia.

WHEREAS for purposes of military defense, public parks, sanitary safeguards and improvements, police protection, control of river shores, and the general welfare of the city and suburbs of Washington, it is desirable that the city and county of Alexandria should be restored to the control of the government of the District of Columbia; and

WHEREAS the interests of the United States also require that the establishment of the seat of government shall not be subject to be permanently modified or impaired by the action of any one or two of the coordinate branches of the Government; and

WHEREAS it is just and equitable that the State of Virginia may be compensated for the loss of revenues incident to the restoration of Alexandria city and county to the exclusive jurisdiction of the United States; and

WHEREAS it is also desirable that the Supreme Court may speedily determine the legality of the cession of part of the seat of government of the United States to the State of Virginia, the Supreme Court having decreed that such cession can be adjudicated only in a case between the United States and the State of Virginia: Therefore, be it

Resolved by the Senate and House of Representatives of the United State of America in Congress assembled, That the Attorney-General be, and he is hereby, directed to bring such suit or other proceeding at law or in equity, on behalf of the United States against the State of Virginia, or otherwise as may, in his judgment, seem appropriate to ascertain and

determine if the cession of part of the District of Columbia to the State of Virginia in eighteen hundred and forty-six was lawful and constitutional; and if said cession shall be decreed to be unconstitutional, and Alexandria city and county are thereby restored to the jurisdiction of the United States, to ascertain and report to Congress what sum will, in his judgment, be a fair and just amount to be paid by the United States to the State of Virginia in lieu and place of the revenues said State now receives for the support of the State government from the said city and county.

This resolution was referred in the Senate to the Judiciary Committee by whom, through its chairman, Senator Hoar of Massachusetts, it was adversely reported. The material portion of the Judiciary Committee's report is as follows:

"It seems to the Committee that it is not expedient that this act of retrocession should be set aside by Congress, even if Congress have the power to do so, without the consent of Virginia. . . .

"As to the suggestion that the retrocession was unconstitutional, it seems to us the answer is that from the nature of the case it is a political and not a judicial question, and that it has been settled by the political authorities alone competent to decide it. . . .

"If it be desirable that Alexandria become a part of the District of Columbia again, the only way to accomplish it will be to open negotiations with Virginia and get her consent. (Luther *vs.* Borden, 7 How., 1.)

"The Committee, therefore, report adversely and recommend that the resolution be indefinitely postponed."

It will thus be observed that, while there has been no express judicial determination touching the constitutionality of the act of retrocession, the question has, in fact, been formally considered by the Supreme Court in 1875, by the attorney general in 1896, and by the very able Judiciary Committee of the Senate

in 1902; and that all have seemingly and tacitly agreed that the act of retrocession should be regarded as an accepted fact, a *fait accompli,* not to be reopened or disturbed.

Whatever differences of opinion, therefore, may have existed or may now exist, touching the constitutional authority of Congress to retrocede this territory to Virginia, the question, it seems, has become purely academic, like the question of the right of secession or of nullification. Time and acquiescence have settled it and the question is no longer open. No doubt, the United States might, if it so desired, raise the question and have it judicially determined by the Supreme Court. But to do so now would seem like an act of self-stultification, and the government has given ample evidence that it has no such purpose.

The attorney general, in his opinion, and the Senate Judiciary Committee, in its report, as above cited, both suggest that if it is deemed desirable to regain this territory, in whole or in part, the proper way to do it is to open negotiations with the state of Virginia and gain her consent—the method prescribed by the constitution for the acquisition of territory. It would seem that this simple method ought to have received more serious consideration than has thus far been shown to it. When the Senate District Committee had this subject under consideration, in 1896, its discussion in committee excited much interest on the part of members and especially those from the state of Virginia. Representatives of that state expressed the opinion that their state would vigorously oppose any effort to reopen the question of retrocession, by legal proceedings, or otherwise to question the constitutionality of that act. Suggestion was made for the restoration to the district of a small strip of

territory immediately opposite Washington city, which would embrace the two square miles of territory already owned by the United States—the military post and the national cemetery, thus restoring to the United States jurisdiction over the Virginia bank of the river, the approaches to its bridges, the adjacent drives and highways, and over the Virginia marshes opposite the city which must be dredged and reclaimed for the proper sanitation of the national capital. To this suggestion, it is said, there was no objection; and it was believed and stated that the state of Virginia would offer no objection to ceding to the United States a strip of territory sufficient to meet the needs of the government, and it seems rather surprising that this was not adopted at the time, as a happy solution of the question.

This brings the controversy down to a recent date. The conclusions which have been already indicated appear sufficiently obvious, and require but a brief restatement, as follows:

First, that the change of location of the District, as originally designed in 1790, by which the town of Alexandria was added to and included within the District, was ill-advised and a mistake, as demonstrated by experience, whether viewed with reference to local or public interests. Such inclusion could be of no permanent benefit, either to the people of Alexandria or to the capital.

Secondly, had the act of 1846 retroceded to Virginia the town of Alexandria only, with its own immediate environs or suburbs, such an act would have wisely corrected the previous mistake and could have occasioned no serious controversy then or since; for it was the people of the county outside of the town who in 1846 were opposed to retrocession. But the

act as passed took from the national capital territory which constitutes the southern threshold of the city, and a portion of which has since been found needful for the purposes of the seat of government.

Thirdly: Nevertheless the act of retrocession has long been accepted as final, and can not now be repealed, nor can it now be invalidated by any judicial proceedings. Constitutional or not, the question can hardly be reopened. But, on the other hand, there is nothing to prevent the United States from regaining so much of the territory referred to as it ought justly to have for the purposes of the seat of government, by a new cession from the state of Virginia of that portion which lies immediately adjacent to Washington city. A straight line drawn anywhere west of Fort Myer would restore the District to a parallelogram, and embrace all needed territory.* Nor could there be any serious obstacle in the way of such acquisition. The state of Virginia could offer no valid objection. That State is under moral obligation to the people of the United States in respect to this territory, which it could not gainsay or ignore. Nor is it probable that Virginia would be disposed to withhold consent to a reasonable proposition, on this subject. Her Senators and public men have declared that the state would not object to ceding a necessary part of the territory referred to. Such an arrangement, therefore, seems to be dependent, chiefly, on the wish and pleasure of the government of the United States. The people of all the states have a proper pride and interest in their capital. That the United

* A better line would be one drawn from the mouth of Four Mile Run to its intersection with the old line near the Theological Seminary. This short line would restore the whole county except the small corner extending from Alexandria to Four Mile Run.

States should exercise jurisdiction over the immediate environs of the national capital, on both sides of the Potomac, seems hardly to require argument. While it is seldom possible to completely divorce such a question from local and temporary interests, it must be manifest that the questions herein referred to affect the public interests of the whole people of the United States, and of future generations, and not alone those of this day, or of this immediate locality. Up to this time the efforts that have been made to secure reconsideration of this subject have been unproductive of any substantial results. Such efforts can succeed when they are so directed as to commend themselves to intelligent public sentiment, and, ultimately, to the approval of the government of the United States, as well as of the state of Virginia.